

Town of Weare
ZONING BOARD OF ADJUSTMENT
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**ZONING BOARD OF ADJUSTMENT
MINUTES
Tuesday March 1, 2011
1st DRAFT COPY**

PRESENT: Jack Dearborn, Chairman; Forrest Esenwine, Member; June Purington, Member; Neal Kurk, Alternate; Malcolm Wright, Member, Elwood Stagakis, Alternate; Chip Meany, Code Enforcement Officer; Sheila Savaria, Recording Secretary.

GUESTS: Ginger Esenwine, Jerry Haynes, Daniel Muller, Mary Graves, Pierre Chabot, Bruce Merrill

I. INTRODUCTION:

Chairman Jack Dearborn called this meeting to order at 7:31 PM and asked the board members present to introduce themselves.

II. ADMINISTRATIVE ITEMS:

(Forrest Esenwine) Presented a memo from Naomi Bolton which appointed Malcolm Wright a full member of the Zoning Board.

III. PUBLIC HEARINGS:

Case #0111 Administrative Appeal for the decision made by the Planning Board in regards to operation in the industrial zone and aquifer protection zone on Gould Road.
21 B&B Lane

Chairman Jack Dearborn recused himself from this case and appointed Forrest Esenwine as acting Chairman. Mr. Esenwine appointed Neal Kurk and Elwood Stagakis as voting members for the meeting.

Daniel Muller, from Cronin and Bisson, representing Doug and Mary Graves, asked Neal Kurk to recuse himself because he sat on the board of the original Planning Board decision that is being challenged, and feels it would be inappropriate for him to sit on this Board as well. Mr. Kurk declined to recuse himself because of a statute that allows people to serve on more than one Board, allowing them to bring information and judgments to the other boards. If he feels he has a bias, Mr. Kurk said he will recuse himself.

Mr. Muller started by saying that they should only be discussing zoning issues at tonight's meeting, and they are not there to argue whether or not the Planning Board followed their site plan regulations.

Mr. Muller explains that there are 3 claims they are raising on this appeal.

1. The first claim is in regards to the special exception that was granted by the ZBA previously in regards to the property at 21 B&B Lane, specifically that permanent sound attenuation buffers be installed on the north boundary of the property and the abutting property of the Graves'. Instead of permanent sound attenuation buffers, Mr. Muller says the applicant decided to rely on non-buffers such as a muffler on the stump grinder, and a non-permanent buffer, such as mulch piles. Mr. Muller argues that this does not satisfy the conditions set by the ZBA, and that neither the Planning Board nor the applicant could amend that decision to change what was required.

2. The second issue is Article 3.2 of the zoning ordinance, which prohibits uses that are injurious peace, comfort, and quiet enjoyment of surrounding properties. The Planning Board did not require a

visual or sound buffer between the Graves' property and the mulching operation. What has been allowed is an extension of the pavement in close proximity to the Graves' property, and use of heavy equipment and truck traffic prior to 5am. Mr. Muller claims there was nothing done to prevent the injury of the quiet enjoyment of the surrounding properties, therefore there has been a violation of Article 3.2.

3. Zoning ordinance 3.1.1, which says only one non accessory use shall be permitted per lot of record at any given time. Mr. Muller claims there are two principle uses, Bruce Hayne's Garage, and the bark mulch business. Mr. Muller argues that the trucking business cannot be considered an accessory use because it predates the mulching business, which is the principle use.

If the Zoning Board votes in favor of Mr. Muller's arguments, the Planning Boards decision would be found in error, and it would be up to the applicant to address the error. The ZBA could not rewrite the Planning Board's decision, only determine if they are correct or not.

Pierre Chabot, from the law firm of Wadleigh, Starr & Peters, is representing Mr. Hayne's. Mr. Chabot discussed the time limits to file an administrative appeal per RSA 676:5. Mr. Chabot feels the application for appeal was not filed in a timely manner and a decision was made by the ZBA to that affect. The Graves' should have filed sooner, and this is going to cause several months delay to his business. Mr. Chabot goes on to say that Mr. Haynes agreed to keep the mulch piles in place while the tub grinder is operating, so the piles should be considered permanent. Also, the muffler for the tub grinder is a buffer, so it should be considered in full compliance with the earlier decision. As for the trucking business, Mr. Haynes has a trade name for that, and he services and inspects all his own vehicles, with only a few outside users. Mr. Chabot points out that the Graves' purchased a property in an industrial zone, then had it rezoned, and that needs to be considered.

June Purington moved to accept the application for administrative appeal for case 0111; Elwood Stagakis seconded, all voted in favor. The motion carried; therefore the case will be heard.

Neal Kurk recused himself from the balance of the hearing, since the actual appeal would be heard tonight.

Jack Dearborn clarified the issue of article 3.1.1, which talks about the principle use of a property. In this case, Mr. Haynes is asking for a bark mulch facility. The previous use allowed, which predated zoning and adjustment of the use, can be allowed as an accessory use, which is typically incidental to the business being performed on the property. The problem the Board is discussing is whether he is allowed to do gainful outside business from an accessory use. Mr. Dearborn feels 3.1.1 denies this, and if they wish to have that, they should apply for a variance. Mr. Dearborn says he agrees that the truck repair business is an accessory allowed use, but if he wishes to extend it for gainful purpose, that is another issue. Mr. Stagakis questioned why the Board continues to divert to other points, and says Mr. Haynes is not allowed to turn anyone down who wants an inspection done at his shop because he is a licensed inspector.

Mr. Muller points out that the zoning regulations categorize uses, and says auto repair and light manufacturing are different uses. In terms of an accessory use, Mr. Muller said the applicant should have requested this when he first came to the Board.

Forrest Esenwine closed the hearing at 8:50 pm.

Chip Meany explained that the site plan was approved by the Planning Board as a bark mulch business with an accessory use of a garage, so the garage and bark mulch issues have already been settled at the Planning Board level. Mr. Meany goes on to say what needs to be determined is who can set the stipulations for the approval.

Forrest Esenwine reopened the hearing for anyone who wanted to comment on Mr. Meany's comments.

Mr. Muller says he disagrees with Mr. Meany regarding the accessory use versus principle use and says it is a zoning determination and a zoning issue by statute. Jerry Haynes said the Planning Board was given points to look at by the ZBA, and they were taken as instructions.

Forrest Esenwine closed the hearing at 8:57 pm.

Mr. Esenwine noted that this case came to the ZBA originally for a special exception that was required to set up a bark mulch operation, and it was heard that way. The issue has come up about trucks and repairing equipment on the site, and nothing was said about outside use. Malcolm Wright said the Board decided the site needed a permanent buffer, and while bark mulch is a good intention, it is not permanent, which is what was granted. June Purington feels if the Board made a particular stipulation on the special exception, and it must be met and not changed by another board. Malcolm Wright and Elwood Stagakis agree with Ms. Purington's point.

Elwood Stagakis moved to approve the appeal of the 1st issue, permanent sound barrier, for case 0111, based on the Planning Boards misinterpretation; Malcolm Wright seconded, all members voted in favor. The appeal was approved.

Elwood Stagakis moved to approve the appeal on the 2nd issue, use as an accessory business, for case 0111; June Purington seconded, all members voted opposed.

Forrest Esenwine closed the hearing at 9:30 pm.

IV. OTHER BUSINESS:

Minutes: Forrest Esenwine moved to accept the January 4, 2011 minutes as distributed; June Purington seconded, all voted in favor.

V. ADJOURNMENT: As there was no other business to come before the board, June Purington moved to adjourn at 9:40 pm; Elwood Stagakis seconded, all voted in favor.

Respectfully Submitted,

Sheila Savaria
Recording Secretary